

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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In the Matter of Applications for Consent)
to the Transfer of Control of Licenses and)
Section 214 Authorizations from Ameritech)
Corporation, Transferor, to SBC)
Communications Inc., Transferee)

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY
CC Docket No. 98-141

**COMMENTS OF MCI WORLDCOM, INC.
CONCERNING POSSIBLE CONDITIONS**

Anthony C. Epstein
STEPTOE & JOHNSON LLP
1330 Connecticut Avenue, N.W.
Washington, D.C. 20036
(202) 429-8065

Lisa B. Smith
Lisa R. Youngers
MCI WORLDCOM, INC.
1801 Pennsylvania Avenue, N.W.
Washington, D.C. 20006
(202) 887-2828

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EXECUTIVE SUMMARY

The set of conditions that SBC and Ameritech have proposed to win Commission approval of their proposed transfer of control is a bad deal — for the Commission faced with the prospect of trying to enforce a complex group of regulatory conditions, for competitors trying to break into SBC and Ameritech’s monopoly local markets, and most importantly for the consumers who would be hurt by the reduction in competition that consummation of the merger would cause. MCI WORLDCOM, Inc. (“MCI WorldCom”) demonstrated in its earlier comments in this proceeding that the proposed merger of SBC and Ameritech would harm the public interest because it would reduce local competition and threaten Internet and long distance competition. SBC and Ameritech’s proposed conditions ironically demonstrate that no set of conditions can, as a practical matter, ensure that the prospects for local competition are enhanced and that competition for Internet services is preserved if the two companies merge. The Commission should simply deny the application, without prejudice to reapplication when SBC and Ameritech have complied with the market-opening requirements of the Telecommunications Act of 1996 and effective local competition has developed.

The fundamental problem is that the proposed merger would inflict serious harm to competition without any offsetting public interest benefits, so the entire justification for merger approval depends on the effectiveness and success of the conditions. This is not a merger that is fundamentally procompetitive or even competitively neutral except for specific, limited aspects where conditions can ameliorate potential harm. This is a fundamentally, intrinsically anticompetitive merger with little or no redeeming value. Behavioral conditions in general, and

certainly those proposed by the merger parties, simply cannot carry the weight that they need to bear in the context of the SBC/Ameritech merger.

The merger would threaten the major public policy objective of the Telecommunications Act of 1996 — maximum and rapid development of competition in the local markets that SBC, Ameritech, and other incumbent local exchange carriers still monopolize. The effects, if not the intent, of the proposed merger would be to raise the barriers to local competition within SBC's and Ameritech's regions, to reduce the ability of regulators and competitors to benchmark the performance of SBC and Ameritech, and to eliminate both potential and nascent actual competition between two companies.

While the merger presents a tremendous downside, it offers no upside. SBC and Ameritech claim that Commission approval of their merger would cause them to increase local competition by entering local markets outside their regions, but SBC and Ameritech are each already large enough, rich enough, and experienced enough to pursue an out-of-region strategy on its own if it is in each company's interests to do so. Conversely, if SBC and Ameritech would not find it in their overall economic interests to compete out-of-region without the merger (and to date they have not competed in out-of-region local markets on any significant scale), they will not compete out-of-region even if they merge. Appropriate skepticism about the sincerity of SBC and Ameritech's professed intentions is reflected in the staff's conclusion that conditions are needed to ensure that SBC and Ameritech carry out their promises in their "National Local" strategy — although the minimal nature of the out-of-region requirements indicates that any benefits would be insubstantial.

For these reasons, the proposed merger of SBC and Ameritech would advance the public interest, and the Commission can approve it, only if conditions imposed by the Commission generate public interest benefits that the Commission is confident will be major enough to outweigh the substantial harms that the merger will produce. The Commission staff is correct that the merger should not be approved unless substantial, effective, and enforceable conditions prevent any reduction in the growth of competition.

Unfortunately, the conditions proposed by SBC and Ameritech do not come close to meeting this test. Indeed, they do not satisfy the standard that SBC and Ameritech committed to meet when they proposed the conditions: that comprehensive conditions “will bring immediate and substantial benefits to the public” and that they are “self-executing.” SBC and Ameritech propose conditions that are largely meaningless because they do not require SBC and Ameritech to do enough to open their local markets to competition, and because they are not enforceable as a practical matter:

- The proposal would allow SBC and Ameritech to complete their merger *before* they satisfy the conditions, thereby eliminating a major incentive to comply and virtually assuring non-compliance. Allowing SBC and Ameritech to merge first and comply later is a recipe for defiance and delay.
- Several conditions addressing issues as vital as collocation, unbundled network elements, and pricing require only that SBC/Ameritech obey the law, in effect rewarding their ongoing failure to live up to their legal obligations.
- The proposed enforcement mechanism is undefined and protracted, and remedies for non-compliance are inadequate.

- Many of the conditions are insufficient, vague, and skewed in favor of SBC/Ameritech.

As a result, attempted enforcement of these conditions would mire the Commission in numerous resource-intensive proceedings. Experience with the Bell Atlantic/NYNEX merger conditions and other procompetitive Commission rules indicates that full compliance will be achieved, if at all, only after enormous delays and costs.

One straightforward approach that would solve many, if not most, of these problems would be to condition closing of the merger on the grant to SBC and Ameritech of in-region interLATA authority pursuant to section 271, as several state attorneys general have recommended. However, the best way to ensure that local competition continues to develop unimpeded by the merger, and that Internet and long-distance competition are preserved, is for the Commission to deny the pending applications. At an absolute minimum, the Commission should greatly strengthen the conditions in the ways explained in these comments.

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**COMMENTS OF MCI WORLDCOM, INC.
CONCERNING POSSIBLE CONDITIONS**

MCI WORLDCOM, Inc. ("MCI WorldCom") hereby submits its comments concerning the set of conditions that SBC and Ameritech have proposed to win approval of the proposed transfer of control and to which the Commission staff has reportedly agreed. For the reasons stated here and in MCI WorldCom's initial and reply comments in this proceeding, the proposed merger of SBC and Ameritech would cause substantial harms to the public interest, and no set of conditions can be substantial, effective, and enforceable enough to offset these harms. The Commission should therefore deny the applications. If, however, the Commission decides to grant conditional approval to the merger, the conditions should be substantially more stringent than those proposed by SBC and Ameritech, and the Commission should require them to satisfy these conditions *before* they close.

ANALYTICAL FRAMEWORK

SBC and Ameritech bear the burden to persuade the Commission that the benefits of their proposed merger exceed the costs so that it affirmatively advance the public interest. As MCI WorldCom previously demonstrated, this fundamentally anticompetitive merger as proposed

would cause serious harms to competition without any offsetting public interest benefits. A merger that otherwise fails the Commission's cost-benefit test may be approved if conditions reduce the costs, or increase the benefits, enough to make the merger as a whole beneficial. Those conditions may take two forms. Structural conditions like divestiture change the ability and incentive of the merging firms to impede competition and are therefore self-enforcing, requiring no post-implementation enforcement. Behavioral conditions attempt to require or prohibit conduct contrary to the merged firm's unfettered economic self-interest, and because the firm has affirmative incentives *not* to comply with conditions that modify profit-maximizing behavior, they require continuing regulatory enforcement.

Of course, conditions can have their intended result only if the merged firm complies with them. Effective conditions must satisfy two requirements: first, the agency must be able to determine whether or not the firm achieves compliance; and second, the costs of non-compliance to the merged firm must exceed the benefits of non-compliance. In evaluating the potential benefit of a condition, the Commission should consider the likelihood of evasion, and the cost and time to complete enforcement proceedings and impose costs for non-compliance. The more a firm believes it can avoid or delay compliance, the greater the likelihood of non-compliance, and the greater the costs that the agency must impose on non-compliance in order to incent compliance. Equally important, if the likely anticompetitive effects of the merger are great, the agency must be confident that the conditions will be truly effective in producing major procompetitive benefits sufficient to offset the harms.¹

¹A direct analogy lies in the treatment of efficiencies in the Horizontal Merger Guidelines of the Department of Justice and Federal Trade Commission, which this Commission has

One way to increase the likelihood of compliance, and reduce the cost to the public of non-compliance, is to require that the firms satisfy the conditions *before* they merge. First, to the extent that the merger will help the firm to compete more effectively, pre-conditions give the merging firms a strong incentive to bring themselves into compliance because the firms' self-interest will cause them to satisfy the conditions. Second, it is generally easier for the Commission to determine compliance than to coerce it, and it is often easier to deter and remedy back-sliding from conditions with which a firm has complied than to force the firm to comply in the first place, especially if the merged firm may invalidly claim that, for example, compliance has turned out to be technically infeasible or delays are due to lack of cooperation from other firms. With pre-conditions, the agency need determine only whether the firm has complied and monitor future performance to ensure continued conformity.

If the firm does not comply, the agency need not worry about misbehavior enabled by the merger because the merger simply will not occur. Except to the extent that the firm can cease to comply with impunity, pre-conditions eliminate the downside of the merger: the costs resulting from the merger are avoided if the companies cannot merge without full implementation of the

considered. See *In the Matter of Application of WorldCom, Inc. and MCI Communications Corporation for Transfer of Control of MCI Communications Corporation to WorldCom, Inc.*, Memorandum Opinion and Order, CC Docket No. 97-211, ¶ 194 (released Sept. 14, 1998). Section 4 provides, "The greater the potential adverse competitive effect of a merger . . . the greater must be cognizable efficiencies in order for the Agency to conclude that the merger will not have an anticompetitive effect in the relevant market. When the potential adverse competitive effect of a merger is likely to be particularly large, extraordinarily great cognizable efficiencies would be necessary to prevent the merger from being anticompetitive." Moreover, note 37 of this section states, "[d]elayed consumer benefits from efficiencies . . . will be given less weight because they are less proximate and difficult to predict." See *1992 Horizontal Merger Guidelines*, 57 Fed. Reg. at 41558, ¶ 4.0. What is true for benefits from efficiencies is equally true for alleged benefits from conditions.

conditions that generate offsetting benefits. If, however, the firm does not have to comply with the conditions until after closing, determining whether the firm complies with the conditions is only the start of the process. If the firm is not willing to do pre-closing what it needs to do to comply, that only proves that the conditions are essential because the costs to the firms of compliance in terms of lost monopoly profits exceed the benefits of the merger. Nor is undoing a completed merger if conditions turn out to be unenforceable a good option because reversing a merger is at best a difficult task after the operations and assets of the two firms have been integrated.

In the context of ILEC mergers that would reduce local competition, the financial consequences to the ILECs of non-compliance with merger conditions must be very substantial to induce compliance. The purpose of behavioral conditions is to decrease significantly the monopoly power of the merged firms, so full compliance means substantial loss of monopoly power and monopoly profits. The strength of the incentive to avoid compliance is illustrated by the fact that no Bell operating company has yet to fully implement the market-opening competitive checklist in section 271 in order to enter the in-region interLATA business.

It is simply not realistic to expect full and timely compliance by incumbent monopolists with complex interrelated market-opening conditions. The painfully slow development of local competition over the last three years teaches that enforcement of regulatory requirements against an unwilling monopolist is enormously difficult. Experience with the Bell Atlantic/NYNEX merger conditions provides a sobering lesson about the danger of relying on promises made only to secure merger approval: Bell Atlantic has engaged in nearly two years of delay and strategic non-compliance, and its conduct has become more brazen as the sunset date for the conditions

approaches.² SBC's recent violations of section 271, the Commission's rules, and its undertakings to the Commission in connection with its acquisition of Southern New England Telephone Company provide further confirmation that it is better for the parties to "fix it first" than to trust their promises to do in the future what they will not do today.³

Moreover, enforcing behavioral conditions intended to make carriers act contrary to their economic self-interest requires the Commission to regulate the operations of the merged company, consuming resources that could otherwise be devoted to the myriad priorities facing the Commission.

For all these reasons, SBC and Ameritech bear a heavy burden to convince the Commission that (1) the procompetitive benefits generated by the conditions will be great enough to outweigh both the substantial anticompetitive harms and the considerable cost to the Commission of long-term enforcement responsibilities, and (2) full compliance can realistically be expected because the cost to SBC and Ameritech of non-compliance imposed by self-executing or Commission-executed remedies will exceed the cost of compliance in lost monopoly profits. The merger parties must provide a record that strongly supports, if not compels, a finding that the alleged benefits generated by the proposed conditions in in-region and

² To date, MCI WorldCom has filed 3 complaints against Bell Atlantic, seeking enforcement of the Bell Atlantic/NYNEX merger conditions. *See MCIMetro Access Transmission Services, Inc. v. Bell Atlantic Corp.*, File No. E-98-12, filed December 19, 1997; *MCI Telecommunications Corp. and MCIMetro Access Transmissions Services, Inc. v. Bell Atlantic Corp. et al.*, File No. E-98-32, filed March 17, 1998. *MCI WorldCom, Inc. and AT&T Corp. v. Bell Atlantic Corp.*, filed June 30, 1999.

³*In the Matter of SBC Communications Inc.*, Order (FCC No. 99-153, rel. June 28, 1999).

out-of-region local markets will be large enough, and certain enough, to outweigh the costs that the merger would otherwise inflict on the public interest.

GENERAL CONCERNS

Several overarching concerns apply to virtually all of SBC and Ameritech's proposed conditions.

Pre-Conditions. First and foremost, all of the conditions should be pre-conditions — SBC and Ameritech should be required to prove to the Commission's satisfaction that they have met all of the conditions *before* they transfer control of any licenses. The proposal relies exclusively on behavioral (versus structural) conditions that seek to constrain anticompetitive conduct through specific requirements or prohibitions on SBC and Ameritech's conduct and with which SBC and Ameritech have strong incentives not to comply. As explained above, pre-conditions are superior, both because they provide a substantial incentive for compliance, and because it is easier to determine whether SBC and Ameritech has in fact complied with conditions than to force compliance if they do not achieve it on their own. SBC and Ameritech's insistence that their proposed merger is critical to their very survival suggests that they will have a strong incentive to comply with conditions that must be satisfied before the merger occurs. That incentive will, by definition, be lost after the closing. Pre-conditions are not a panacea because some post-closing oversight is needed to prevent any back-sliding. However, it would be substantially easier for the Commission to enforce conditions requiring SBC and Ameritech to continue levels of performance they have already demonstrated they can meet (including through use of self-executing remedies) than to enforce conditions requiring SBC/Ameritech to cooperate

on a timely basis with their competitors in the design and development of complex systems or the formulation of cost-based prices.

Allowing SBC and Ameritech to merge first and comply later is a recipe for defiance and delay. It would not only prevent achievement of the purpose of the conditions — generating local competition that would otherwise be prevented by the merger — but impose even greater burdens on the Commission to police and enforce conditions that the merged entity will have compelling incentives to frustrate and evade. Indeed, one might reasonably ask why SBC and Ameritech would agree to conditions if they actually expected that their version of implementation would substantially increase the effectiveness of competition against them in their monopoly local markets.

Section 271 Approval. One simple and effective approach to these problems would be to permit SBC and Ameritech to transfer control only when they have obtained authority pursuant to section 271 to provide interLATA service in at least a majority of their in-region states. Several state attorneys general have advocated this procedure.⁴ It would (i) ensure that SBC and Ameritech have fully implemented critical steps to open their local markets to competition, thereby reducing all of the risks posed by the merger, (ii) enhance SBC's and Ameritech's current incentives to take these steps, (iii) avoid placing additional regulatory burdens on the Commission, (iv) maintain the division of responsibility between the Commission and state commissions statutorily prescribed in section 271 to oversee compliance with basic market-opening requirements, and (v) accommodate SBC's and Ameritech's legitimate interests

⁴Comments of the Attorneys General of Indiana, Michigan, Missouri and Wisconsin (dated April 26, 1999).

because they themselves assert that they need section 271 authority to implement their “National Local” strategy through the merger.

Obeying the Law. The merger should not be approved without stringent conditions (and indeed it should not be approved at all) because it will reduce competition in markets for local, Internet, and long-distance services. These threats to competition exist because SBC and Ameritech’s non-compliance with the requirements of the 1996 Act and the Commission’s implementing regulations has enabled them to preserve their local bottleneck largely intact. It would be an affront to the Commission’s authority to reward these companies for their intransigence by approving their application based on a promise to comply — at some time in the future — with the legal requirements they have flouted for so long.

Yet that is what some of the proposed core conditions would do. As explained in more detail below, the collocation, unbundled network element (“UNE”), and pricing conditions do little more than require SBC and Ameritech to obey existing federal and state regulations. That is true even though SBC and Ameritech have an atrocious track record in providing collocation and UNEs on reasonable and nondiscriminatory terms, including cost-based rates. Their continuing violations of these statutory and regulatory requirements cripple facilities-based competition because facilities-based competitive local exchange carriers (“CLECs”) cannot address the broader local market, in particular residential and small business customers, without full implementation of existing collocation, unbundling, and pricing requirements.

It should go without saying that conditions that merely track existing legal requirements provide no basis for approval of the merger, but apparently SBC and Ameritech do not grasp this truism. The merger creates new threats to competition that would not otherwise exist, and new

requirements are needed to address them. SBC and Ameritech cannot properly claim compliance with existing law as a benefit that would not be realized without the merger. If SBC and Ameritech cannot be counted on to comply on a timely basis with applicable legal requirements if they do not merge, they lack the character qualifications necessary for merger approval.

FCC Enforcement. If the Commission does not insist on pre-conditions that must be satisfied before closing, the Commission should prepare to devote substantial resources to the enforcement of these conditions. As discussed above, if they are to achieve their purpose of ameliorating the merger's anticompetitive effects, behavioral conditions that need be satisfied only at some time in the future have the inevitable effect of placing a major enforcement burden on the Commission. This responsibility cannot be shunted to state commissions, which did not adopt these conditions and which already have large responsibilities under both the 1996 Act and procompetitive state laws. To make these conditions work, the Commission should commit to resolving complaints on a prompt, expedited basis, and to imposing substantial financial consequences for non-compliance. The allocation of authority between this Commission and state commissions should be clear in order to avoid jurisdictional uncertainty that will delay resolution of complaints on the merits.

Duration of Conditions. The conditions must remain in place as long as necessary to serve their intended purpose. At this relatively early stage in the development of local competition, the Commission cannot reasonably pick a date on which the conditions should sunset. That decision should be made based on the actual evolution of competitive conditions in the local marketplace. Picking an arbitrary termination date now will inevitably cause the conditions to end too soon or too late. Instead, the Commission should periodically review the

continuing need for the conditions, with the burden on SBC/Ameritech to demonstrate that the conditions have in fact outlived their usefulness. Interested parties should have a full opportunity to comment on the extent of past compliance and the need for continuing the conditions.

Internet Competition. MCI WorldCom demonstrated that the proposed merger of SBC and Ameritech, especially in combination with the proposed merger of Bell Atlantic and GTE, would jeopardize competition to provide Internet services by expanding bottleneck control over high-speed Internet access. None of the proposed conditions addresses the threat to Internet competition if this merger is allowed to proceed. The merger would enhance SBC and Ameritech's ability to leverage their monopoly control over xDSL services into the Internet. The best solution to this problem is not an array of complex conditions that would regulate SBC and Ameritech's conduct relating to the Internet, but denial of the applications.

Access Charges. The proposal utterly fails to address the issue of inflated access charges. The ability of both SBC and Ameritech to set access charges far in excess of cost demonstrates that effective competition in local telecommunications markets has not yet developed. As long as access charges remain inflated, incumbent local exchange carriers ("ILECs") like SBC and Ameritech will have an enormous advantage, especially if and when they gain authority to provide in-region interLATA services. Indeed, the fact that inflated access charges are not a real cost to SBC/Ameritech when it originates or terminates interLATA calls in-region makes it easier for SBC/Ameritech not to impose minimum monthly or flat-rate charges (*see* paragraph 59⁵). Moreover, SBC and Ameritech can be expected to argue that the

⁵Unless otherwise indicated, all cites to any "paragraph" is to the attachment entitled "Proposed Conditions for FCC Order Approving SBC/Ameritech Merger" to SBC and

Commission's determination that calls to Internet service providers ("ISPs") are generally interstate in nature buttresses their efforts to impose access charges on these calls. The risks posed by the merger would be substantially reduced if access charges were reduced, and grant of the applications should be conditioned on a reduction in access charges.

SPECIFIC CONCERNS

The following sections discuss each of the 25 conditions proposed by SBC and Ameritech.

I. PERFORMANCE MEASURES AND REMEDIES

SBC and Ameritech's proposed plan for performance measures and remedies for non-compliance does not go nearly far enough. The criteria are incomplete and inadequate, and the purportedly self-executing remedies are insufficient. These inadequacies are especially dangerous because, despite SBC and Ameritech's assertion that the proposal would not supersede stronger state plans, Ameritech has already urged the Michigan commission to delay the existing deadline for implementation of more stringent measurements that Ameritech claims are "inconsistent" with the proposal to this Commission.⁶ A strong, comprehensive, and effective plan is essential.

Incompleteness of Measures. SBC and Ameritech have proposed a measurements plan that includes only 20 performance criteria (paragraph 5 of Attachment A), omitting many critical

Ameritech's July 1, 1999, *ex parte* in this proceeding.

⁶Ameritech Michigan's Petition for Rehearing or Clarification, Case No. U-11830, *Ameritech Michigan's submission on performance measurements, benchmarks, and reporting in compliance with the October 2, 1998, Order in MPSC Case No. U-11654* (filed June 28, 1999).

functions and process which CLECs depend on SBC and Ameritech to provide efficiently, reliably, and nondiscriminatorily. SBC and Ameritech's proposal would leave CLECs without critical protection against inferior and discriminatory treatment. Other state commissions, including Texas, California, Michigan and Ohio, in addition to states outside SBC and Ameritech territories, have required many of the critical measurements SBC and Ameritech omitted from their proposal. Indeed, although the applicants state that this proposal is based on the SBC-SWBT measurements plan in Texas, the Texas plan has 121 measurements. In California, an administrative law judge recommended approval of 42 of the measures contained in a settlement agreement to which SBC's subsidiary Pacific Bell is a party, and the California commission is expected to act on this recommendation in August. SBC and Ameritech's proposal ignores critical business processes such as Operator Services, Directory Assistance and Directory Listings, and Database Updates. In other areas, such as Ordering and Provisioning, General OSS, Billing, and Collocations, SBC and Ameritech's offer of measurements is grossly inadequate.

Reports should be disaggregated for different services so that the viability of competition to provide all kinds of services is protected. Performance should be reported separately for POTS (residential and business), ISDN, Centrex, PBX (Analog and DID) Designed Services (DDS, DS1/ISDN PRI, DS-3, VGPL/DS0, Unbundled Network Element ("UNE") loops -- nondesigned and designed 2-wire Digital ISDN capable and Digital xDSL capable, 4-wire analog, assured, and digital capable/HDSL, UNE loop PBX, UNE Ports — designed and nondesigned, UNE dedicated transport (DS-1 and DS-3), UNE Platform, interconnection trunks, PNP, and projects involving more than 20 lines.

Inadequacy of Standards. An effective performance standards plan would be consistent with the Measurements and Performance Standards (“MPS”) included as Attachment 1. The 20 performance measurements proposed by SBC and Ameritech are inadequate to ensure that the ILEC is providing CLECs with an effective and nondiscriminatory opportunity to compete. For example, a CLC should be notified promptly if an order is rejected, so the CLEC can quickly revise the order or find out why the ILEC is rejecting an order that used to go through. Likewise, if the ILEC cannot install facilities as expected, it should provide timely notice to the CLC so that arrangements may be made with the end user. These measures are included in the proposed California settlement but are missing from SBC and Ameritech’s proposal to the Commission. Moreover, the standards contained in the SBC/Ameritech proposal are inadequate because they do not reflect the actual capability of SBC/Ameritech’s OSS systems. Below are some highlights of the proposal’s deficiencies.

- SBC/Ameritech benchmarks for electronic transactions are lax. For example, the return of Firm Order Confirmations is benchmarked at a 5 hours for POTS and UNE loop, regardless of processing method, while Pacific has stipulated to 10 minutes for fully electronic orders. *See Proposed Measure (“P.M.”) 1.* The average response time for the return of CSRs with more than 31 lines benchmarked at 24 hours, even if electronic. P.M. 15.
- “Parity” under the SBC/Ameritech plan for missed due dates would compare CLEC orders against retail services that are not analogous. *See P.M. 2a, 2b, 2c and 6.*
- In some cases, the statistic to be reported under the proposal does not include *all* events, thereby omitting the variation between the service provided to the CLEC and the ILEC’s retail branch with respect to the time to complete a CLEC’s order versus a retail order (*see P.M. 2.d*), and the variation between time between close of billing cycle and transmission of a bill (P.M. 20.)

- In other cases, the measurement does not cover a process that CLECs have already experienced trouble, *e.g.*, the percentage of trouble reports within 10 days of installation is not reported for local number portability (LNP) (P.M. 3a, 3b, 3c), and percent of premature disconnects for coordinated cut-overs (P.M. 13),
- The proposed measurement of premature disconnections in the case of coordinated cut overs captures only one of the several steps in the process that can go wrong.
- The measurement does not cover new products that CLECs are trying to provide in competition with SBC and Ameritech, *e.g.*, percent installation completed within the stated interval is not reported for DSL and LNP (P.M. 4c.).
- The proposed exclusion of “lack of ILEC facilities” as a basis of missed due dates will hide the allocation of limited ILEC facilities to the ILEC. *See* P.M. 5a, 5b, 5c.
- The proposal’s failure to disaggregate trouble reporting between loops and interconnection trunks, LNP, and NXX code openings means that CLECs and regulators have limited insight into the impact of repeated outages upon competition (*see* P.M. 9a, 9b, 9c, 11a, and 11b).
- While SBC’s California Pacific plan measures the average time to restore all lines and trunks, SBC/Ameritech propose to measure the outage for interconnection trunks only, despite the potential customer impact of line outages. *See* P.M.12.
- Percent FOCs Received in X Hours (P.M. 1) measures only LSRs and excludes ASRs for services that CLECs use to provide local service to their customers. This measure also does not specify how to handle a null (empty) field or failure to receive a FOC.
- The proposal for FOCs does not require SBC and Ameritech to start the clock when a FOC is received. In Texas, MCI WorldCom found that SBC-SWBT delays putting its time-stamp on the FOC.

- SBC and Ameritech are proposing to exclude delay days for lack of facilities (P.M. 5a). However, to determine whether the ILEC is giving itself precedence over CLECs when facilities are limited, the Texas commission approved a measurement, with SBC-SWBT's agreement, for Percent Company Missed Due Dates Due to Lack of Facilities. Alternatively, the measure should include all missed days, including lack of facilities, in P.M. 5a.
- On the Mean Installation Interval (4a-c), SBC and Ameritech reasonably propose to exclude customer requested due dates greater than the standard interval since this would increase the overall interval. However, SBC and Ameritech should also exclude customer requested due dates *less* than the standard interval since CLECs pay extra to have the ILEC fulfill them on an expedited basis. Because SBC and Ameritech treat these orders differently, they should be excluded from this metric, unless CLECs can request faster times without extra costs, delays of other CLEC orders, or other adverse consequences.
- The start date for P.M. 6, Average Installation Interval - DSL, should be changed to the date of CLECs' request for DSL, not the date on which ILEC personnel return the loop qualification, which is within the ILEC's control and could be hours, days, or even weeks after the request. That is, SBC and Ameritech should include in the metric the time it takes for them to determine whether conditioning is needed.
- SBC and Ameritech should collect data for Average Response Time for Loop Make-Up Information (P.M. 7) consistent with its purpose. The clock should start when the CLEC requests the information and stop when the ILEC provides the information. In Texas, MCI WorldCom found that SBC-SWBT starts the clock only when it sends a request to the Outside Plant Engineer.
- Order Process Percent Flow Through (P.M. 16) includes only those orders which flow through the system as SBC and Ameritech have designed it (*i.e.*, MOG-Eligible orders). All orders should be included in this metric, whether or not SBC and Ameritech have yet to implement systems capable of handling them properly.

- Common Transport Trunk Blockage (P.M. 18) excludes high usage trunk groups, but they should be included in order to report blocking on all trunks, not just low or medium usage ones.
- SBC and Ameritech do not make clear whether data for P.M. 17 and 18 is gathered every day of the month (except weekends for P.M. 18) or only for one week out of the month. The data should be gathered for all days to ensure consistent performance, and not just adequate performance in the week selected by the ILEC as the “official study week.”

The following six measurements provide examples of the great difference between what CLECs need to conduct their business on a competitive basis and what SBC-AIT are willing to offer: All of these metrics are reasonable and realistic. For example, dependability of OSS to 95% reliability during prime times for ordering and preordering is crucial to consumer acceptance of CLEC services, and other ILECs, such as Bell Atlantic, have committed to at least 99.5%. Similarly, setting the standard at less than 1% service disruptions for no more than 5 minutes is entirely reasonable for botched hot cuts because there are so many precautions the ILEC can follow to protect against any disruption whatsoever.

Measurement	MCI WorldCom Business Need	SBC-Ameritech Proposal
Completion Notice Interval	1 hour	1 day
Percent Premature Disconnects	<1% for no more than 5 minutes	2% for 10 minutes
OSS Availability	99.9% (allows 1 day in 365 to fail)	99% (allows 4 days in 365 to fail)
Trunk Blockage	1%	3%
Missed Collocation Dates	<2%	5%
Billing Timeliness	100% in 48 hours	95% in 6 days

All of the standards should be defined in terms of numerical levels, which need to be periodically reviewed and adjusted based on benchmark studies of reasonably analogous retail services or processes, and not be subject to “rolling” parity, as in paragraph 6 of Attachment A.

CLECs are entitled to service under section 251(c) that is reasonable as well as nondiscriminatory. Reasonable standards of service should be adopted and defined in terms of absolute numerical levels, which need to be periodically reviewed to ensure fair service and reflect service improvements. The quality of service provided to CLECs should not vary just because the quality of SBC/Ameritech's retail service goes up and down. For example, MCI WorldCom should be able to tell a customer dependably when a line will be provisioned. The customer does not want to hear about a range of possibilities based on what SBC or Ameritech claim they provide to their retail customers from time to time.

Benchmarks When a standard is used to measure compliance with a performance yardstick, SBC/Ameritech should not use any statistical calculation in addition to a benchmark, as paragraph 3.a of Attachment A provides. Benchmarks are used to establish levels of acceptable OSS performance when, due to a lack of retail analog, a statistical test for parity cannot be used. The benchmarks themselves constitute the standard of service; an occurrence of OSS service either met the standard or it did not. SBC and Ameritech's proposal "utilizes a standard statistical calculation for calculation of the z-value for benchmarks." Attachment A, paragraph 3.a. This methodology is flawed because the derivation of a z-statistic for CLEC occurrences will mask the individual results that are subject to the performance benchmark. An event either meets the benchmark, or it does not, and non-performance occurs each time the benchmark is missed. Moreover, the effect of using a statistical test on a benchmark is a small but significant reduction of approximately 1.7 percent in the benchmark, which already prescribes the appropriate level of service. For example, although the proposed standard requires a FOC for some business service to be returned 95% of the time in 24 hours, the nominal

benchmark is deceiving — once SBC/Ameritech runs the z-test on the benchmark, the 95% now becomes 93.3%, allowing an additional 1.7% of the orders not to meet the benchmark.

Statistical Tests. As provided by paragraph 7 of Attachment A, the modified z-test is the appropriate statistically based test for determining whether parity exists. But the proposed formulas do not use the modified z-test in all cases. For measurements expressed as percentages or rates, SBC and Ameritech propose to use the standard z-test (pooled variance) should not be used for any measurements expressed as percentages or rates. By using the pooled variance, SBC and Ameritech are increasing its margin of error by including CLECs' likely more variable data in the comparison. If the CLEC variance is greater than the ILEC variance, the z-test will not properly detect differences in the means. The large CLEC variance will inflate the standard error of the difference making differences in the mean appear less significant. SBC and Ameritech should use the modified z-test for all parity measurements, whether they are expressed as a means, proportions, or rates.

Small Sample Sizes. For sample sizes of less than 30, permutation testing should be used. The alternatives presented by SBC and Ameritech under "Qualifications to use Z-test" heading have not been demonstrated to be methodologically sound. On the other hand, the theoretical validity of permutation testing is widely recognized as a valid means of addressing parity for small sample sizes. Since the process of permutation testing is relatively simple and easily verified, there is no reason to adopt the untested process shown as "Alternative 1."

Adjustment for Random Variation. SBC and Ameritech wrongly propose a forgiveness every month for a 5% chance of Type I errors (Non-Parity Falsely Detected). The k table was meant for analyzing overall compliance with the 1996 Act and not to excuse a limited